APPELLEES' APPENDIX

TAB E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In re

Case No.
01-16034
ENRON CORP., et al, *SEE BELOW

Debtors.
----------x
October 20, 2005
10:05 a.m.

United States Custom House
One Bowling Green
New York, New York 10004

DIGITALLY RECORDED PROCEEDINGS
(Proceedings - Entire Day)

10:01 01-16034 ENRON CORP., ET AL
Debtors' objection to certain proofs of claim filed in connection with the Brazos Financing Structure.

10:10 01-16034 ENRON CORP., ET AL
Motion by Debtors Portland General Holdings, Inc. and Portland Transition Company, Inc. exhibit chapter 11 cases.

10:20 01-16034 ENRON CORP., ET AL
Debtors' sixth omnibus motion to deem schedules amended to modify certain scheduled claims.

B E F O R E:

THE HONORABLE ARTHUR J. GONZALEZ
United States Bankruptcy Judge

DEBORAH HUNTSMAN, Court Reporter
198 Broadway, Suite 903
New York, New York 10038
(212) 608-9053 (917) 723-9898

Calendar: (continued)

10:25 01-16034 ENRON CORP., ET AL

Scheduling conference re Objection to Notice of Presentment of Order Approving Amended Schedule S to Plan Supplement.

Objections filed.

11:50 01-16034 ENRON CORP., ET AL
Motions filed by the Debtors for approval of Settlement Agreements between Enron Energy Services, Inc., Enron North America Corp., and Clinton Energy Management Services with the following counterparties:

USL Parallel Products of California; Developers Funding Company; Royster Clark, Inc.; 1260 BB Property LLC; Eldona Corp., W.W. Henry Company; Grand Mandarin; King Manor Care Center; Campus Manor Apartments; Madera Cleaners & Laundry, Inc.; Coin Op Laundry Milpitas; Renewal Housing Corp. and SCA Packaging North America, Inc.

11:55 01-16034 ENRON CORP., ET AL
Motion by Debtors for approval of settlement agreement by and among the Enron Parties, the Federal Energy Regulatory Commission's Office of Market Oversight and Investigations, The California Parties, and the additional claimants.

11:25 01-16034 ENRON CORP., ET AL
(03-93172) Enron Corp. v. Granite Construction Co.:
Hearing re request for stay of discovery.

11:45 01-16034 ENRON CORP., ET AL
Debtors' objection to proof of claim number 25267 filed by Exodus Communications Australia PTY Limited.

Calendar: (continued)

12:10 01-16034 ENRON CORP., ET AL
Third omnibus motion filed by the Debtors for an order estimating certain contingent or unliquidated claims for purposes of establishing reserves.

12:20 01-16034 ENRON CORP., ET AL
Debtors' Ninety-Second Omnibus Objection to proofs of claim with respect to claim no. 25077 filed by Fireman's Fund Insurance Company.

Response filed.

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form of Order.

JUDGE GONZALEZ: Does anyone else wish to be heard?

(Whereupon, no response was heard.)

JUDGE GONZALEZ: No further comment being heard, based upon the pleadings as filed and the representations made on the record, I will grant the relief requested. You may hand up the Order.

MS. MAYER: Thank you, Your Honor.

JUDGE GONZALEZ: The next matter we have listed is a scheduling conference re Objection to Notice of Presentment of Order Approving Amended Schedule S to Plan Supplement.

MS. MAYER: Yes, Your Honor. Sylvia Mayer, again, on behalf of the Reorganized Debtors.

Your Honor, the Reorganized Debtors filed an amended version of Schedule S under Notice of Presentment, and an Objection was filed by Baupost/Abrams.

Under the confirmed Plan, subject to the ultimate allowance of the claims,

certain claims are entitled to the benefit of contractual subordination provisions in four pre-petition indentures. Exhibit L to the Plan identified the four pre-petition indentures and set forth the relevant provisions in each of the indentures that define the Senior Indebtedness for purposes of benefiting from the contractual subordination provisions.

The four indentures are the 1987 Indenture, the TOPRS Indentures, and two indentures referred to as the "MIPS," M-I-P-S. Schedule S to the Plan Supplement set forth generally the types of claims benefiting from contractual subordination and contained a reservation by the Debtors for the right to amend or modify the schedule.

On July 29th, the Reorganized Debtors filed their Amended Schedule S, setting forth in greater detail the claims benefiting from contractual subordination, as well as adding and removing certain claims from the list.

One Objection was filed to the

Amended Schedule S by Baupost/Abrams. They filed the sole Objection.

In summary, their Objection seeks to remove from Schedule S with respect to the 1987 Indenture Letter of Credit Claims and certain claims that they refer to as "Intercompany Claims," with respect to the TOPRS Indentures, Letter of Credit Claims and certain claims that they deem to be Intercompany Claims, and with respect to the two MIPS Indentures, there are certain claims that Baupost/Abrams deems to be Intercompany Claims.

Several Creditors with interest in the letter of credit or Intercompany Claims have responded to Baupost's Objection and assert positions contrary to Baupost's interpretation of these provisions.

From the Reorganized Debtors' perspective, this is really an intercreditor dispute. The same amount of money will go out of the estate. It doesn't impact on the funds that are available for distribution. It simply impacts on whom we make the

distributions to with respect to the contractual subordination provisions.

Depending on the outcome of the issues, some of the issues that are raised by Baupost may affect claims that were not identified by Baupost in their Objection. So the Reorganized Debtors have reserved their rights to further modify Schedule S, depending upon the Court's ruling, but otherwise the Reorganized Debtors are effectively neutral as to these issues that are essentially an intercreditor dispute.

JUDGE GONZALEZ: All right. Thank you.

I assume I will then hear first from Baupost?

MR. WINSTON: Good morning, Your Honor. Eric Winston of Stutman Treister & Glatt on behalf of the Baupost Group and Abrams Capital, holders of a substantial number of Enron unsecured claims.

As Ms. Mayer pointed out, we were the only Objectors to Schedule S. Our objection focused on --

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JUDGE GONZALEZ: Would you speak louder to make sure the phone is picking up what you are saying.

MR. WINSTON: Sure, Your Honor. Our Objection focused on two types of claims. The first type of claim was a claim that in Baupost/Abrams' view was a claim of an affiliate of Enron against Enron. The second type of claim was a claim arising from an obligation of Enron to reimburse issuers of letters of credit.

There are some of the claims that we have identified, as not belonging on Schedule S, for whom no responses have been received. Baupost/Abrams submits that, at least with respect to those claimants, they have not carried their burden of proving that they are entitled to benefit from the contractual subordination provisions of the three types of indenture that Debtors' counsel pointed out.

With respect to the category of Intercompany Claims, the only claimant that did not respond were the holders of the

Yosemite Claims. Your Honor, notwithstanding the fact that they did not respond, on Monday we served a notice of withdrawal of our Objections to the Yosemite Claims with respect to the 1987 Indenture and with respect to the two MIPS Loan Agreements. Because of the problems with ECF on Monday and Tuesday, I am not sure if it ever got filed, but we do know a courtesy copy went to the Court. So, hopefully, Your Honor has received it and we wanted to make the record clear. Our Objection, however, still stands against the Yosemite Claims with respect to the TOPRS Indentures.

With respect to the Letter of Credit Claims, the following entities did not respond: Toronto Dominion, Australian and New Zealand Banking, Banco Nazionale Intessa BCI, Banco DeRoma and Unicredito. American Express did file a response that was late, but for purposes of this argument, we are going to treat them as if they have responded on time.

I have just one other point to

make, before going into the merits of the arguments. I don't think it is disputed that this dispute is going to turn on the interpretation of contractual law under applicable state laws, and there are only two principles of law that I think need to be highlighted.

The first one is assuming that the Court determines that the provisions are ambiguous, the Court has to apply it by meaning. If the Court determines that any provisions are ambiguous, the parties will be entitled to submit parol evidence to support their conflicting interpretations. But the second principle is that no matter what happens, all of the claimants that are seeking to benefit from contractual subordinations carry a heavy burden of proving it. So at the end of the day, it is going to be their burden to show that they are entitled to it.

I am not going to repeat all of the arguments raised in the papers, but I thought it would be helpful to break it down as

follows. I am going to start with the Intercompany Claims with the 1987 Indenture, and then I am going to go to the two MIPS Loan Agreements, and then follow up with the TOPRS Indentures, and then I would turn to the arguments with respect to the Letter of Credit Claims.

With respect to the 1987 Indenture, the entire dispute turns on whether or not the claim is held by a "Subsidiary," as that term is defined in the 1987 Indenture. In summary, in order to be a Subsidiary under that indenture, Enron must either directly or indirectly own all of the voting stock of that particular entity, and then the only other issue is whether or not the Subsidiary qualifies as a corporation, as that term is used in the 1987 Indenture.

As Baupost and Abrams pointed out in their papers, the term "corporation" is not defined in the indenture, and there is no evidence to indicate that the intent was to limit it to literally corporations, as opposed to LLCs. Just to note, Bankruptcy

Code Section 1019 does define "corporation" to include LLCs. So it is not unreasonable to think that the undefined term "corporation" in the 1987 Indenture really meant things like corporations, LLCs, and similar business entities.

As it currently stands today, the only Intercompany Claim that is objected to with respect to the 1987 Indenture is the claims held by Enron Finance VOF. As JPMorgan pointed out in their Objection, Enron Finance is an LLCs. So for purposes of the 1987 Indenture, Baupost/Abrams submits it qualifies.

The key question for Enron Finance, however, is: did Enron have voting control of the entity at the relevant times? As JPMorgan points out and we concede, at the Petition Date not all of the stock for which voting power was attributed was in the hands of Enron. Zephyrus and the entities controlling Zephyrus had preferred interests in Enron Finance for which there was voting control.

However, as part of the Choctaw/Zephyrus settlement -- and this is unique to Zephyrus and not what occurred with Cherokee -- the membership interests held by Zephyrus in Enron Finance were redeemed by Enron and thereafter cancelled. So at the moment of that settlement, which occurred prior to the Effective Date of the Plan, all of the voting control in Enron Finance was held by Enron either directly or indirectly.

So for purposes of the 1987 Indenture, we believe that at the moment of the Effective Date, which we believe is what counts for purposes of distributions to holders of subordinated notes which are upstream to holders of Senior Indebtedness under the 1987 Indenture, Enron Finance counts as a Subsidiary.

Assuming I am wrong -- which I don't believe I am, but assuming I am wrong -- one of the two claims held by Enron Finance is actually a claim assigned to Enron Finance by an entity known as ECIC. ECIC is clearly a corporation. I don't think there

is any dispute about that. There is no evidence to indicate that its voting power was ever held by anyone other than Enron. Neither Enron Finance nor the assignees of claims that were once held by Enron Finance can have rights superior to those of ECIC for purposes of determining contractual subordination benefits.

So Baupost/Abrams submits that the Enron Finance claims listed on Schedule S with respect to the 1987 Indenture should be taken off.

Unless Your Honor has any questions, let me turn to the 1993 and 1994 Loan Agreements. These two Loan Agreements have substantially the same definition of "Senior Indebtedness." This definition states that all indebtedness of Enron, whether outstanding on the date of the Loan Agreements or thereafter created, incurred, or assumed which is for money borrowed or evidenced by a note or similar instrument given in connection with the acquisition of any business, property, or assets that is

counted for Senior Indebtedness.

Unlike either the 1987 Indenture or the TOPRS Indentures, the term "indebtedness" is not defined in any meaningful way. Actually, let me step back. The term "indebtedness" is not defined as it was defined in the 1987 Indenture, and indebtedness is not defined in the TOPRS Indentures. Unlike the 1987 Indenture or the TOPRS Indentures, there are no express inclusions or exclusions. All we have is the words in front of us, "all indebtedness," which is for money borrowed or evidenced by note.

It is Baupost/Abrams' position that the term "indebtedness," as used in these two Loan Agreements, is ambiguous, and that parol evidence is permissible to clarify the meaning of the term for purposes of showing that claims held by affiliates, which Baupost/Abrams calls "Intercompany Claims," were never intended to be included in the universe of claims to benefit from contractual subordination.

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There are two facts I would like to bring to the Court's attention, one of which I think is just within the loan documents themselves and the one that comes from outside the loan documents.

The first is these two Loan Agreements were executed between Enron and its affiliate. There was no indenture that set forth the terms of who gets the benefit from contractual subordination. Unlike the 1987 Indenture and unlike the TOPRS Indentures, this was a straight, inside loan transaction. So there is really no third parties kind of vetting what is meant by "Senior Indebtedness" for purposes of the two Loan Agreements.

Then, as Your Honor would have seen in our initial opening papers, the prospectuses that went to accompany the MIPS transactions, for which the two Loan Agreements were integral to those two MIPS transactions, stated that the amount of Senior Indebtedness reported on a consolidated basis was a certain number -- it

was, I think, $3.2 billion -- as of 1993 or 1994. The key fact of the prospectuses is that for purposes of determining Senior Indebtedness, at least in this extrinsic document, it was reported on a consolidated basis. So you would remove what would be true Intercompany Claims. I don't think there is any dispute here that the counterparties to the two Loan Agreements were affiliates of Enron. So we believe the parol evidence will show that there was no intent to include Intercompany Claims as the type of claim that would benefit from contractual subordination.

JUDGE GONZALEZ: What difference does that make? If you have the documents themselves indicating subordination, what difference does it make whether you think the perspective reflects an intention not to have Intercompany Claims considered Senior Indebtedness?

MR. WINSTON: Your Honor's point is well taken, assuming that the definition of Senior Indebtedness in those two Loan

Agreements is unambiguous. As I opened this part of the presentation, the term "indebtedness" is not defined. It is a term that is defined in other indentures, so it is one that is subject to more than one meaning. In this particular case with this particular type of definition in these two Loan Agreements, it is Baupost/Abrams' position that there is no way to determine on the face of the documents that that term is unambiguous in including Intercompany Claims, and so you go to parol evidence.

Now, it is possible -- I doubt it -- but it is possible that the parties that are seeking to include their claims will be able to generate parol evidence to show there was an intention, but that is for a later day. But for purposes of what is before the Court now, if the Court determines that term is ambiguous, we go to the next step. If the Court determines it is unambiguous, then I guess I am done. But I think that term, certainly when you compare it to the other indentures, is one which is